

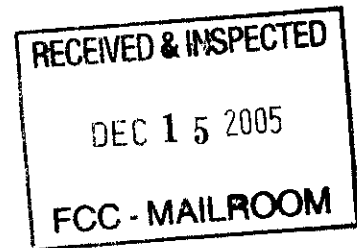


# Wyoming Department of Education

Dr. Jim McBride, Superintendent of Public Instruction  
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December 14, 2005

Request for Review  
Federal Communications Commission  
Office of the Secretary  
9300 East Hampton Drive  
Capitol Heights, MD 20743



DOCKET FILE COPY ORIGINAL

**A. cc Docket No. 02-6**

Universal Service Administrative Company  
Administrator's Decision on Appeal- Funding Year 2004-2005  
June 29, 2005  
Applicant: State of Wyoming, Department of Administration and Information  
Form 471 Application Number: 387256  
Billed Entity Number: 154794

**B. Contact Information**

Clementina Jimenez  
Wyoming Department of Education  
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**REQUEST FOR REVIEW.**

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List ABCDE

**C. Funding Request Numbers That Are Subject of Appeal**

1074870	1074993	1075047	1075586	1075672
1074871	1074994	1075049	1075587	1075674
1074872	1074996	1075052	1075588	1075676
1074873	1074997	1075053	1075589	1075680
1074876	1074999	1075055	1075590	1075681
1074878	1075001	1075056	1075591	1075682
1074880	1075003	1075058	1075592	1075683
1074881	1075004	1075060	1075593	1075684
1074882	1075006	1075062	1075595	1075685
1074883	1075007	1075064	1075596	1075686
1074884	1075009	1075068	1075598	1075688
1074885	1075011	1075069	1075599	1075689
1074886	1075012	1075071	1075601	1075693
1074888	1075013	1075073	1075602	1075695
1074889	1075014	1075075	1075603	1075698
1074890	1075015	1075078	1075606	1075699
1074891	1075016	1075080	1075607	1075701
1074892	1075017	1075081	1075610	1075702
1074893	1075018	1075082	1075611	1075704
1074895	1075019	1075083	1075634	1075705
1074896	1075020	1075084	1075637	1075708
1074897	1075021	1075085	1075638	1075710
1074899	1075022	1075086	1075639	1075769
1074900	1075023	1075088	1075640	1075771
1074902	1075024	1075089	1075642	1075772
1074904	1075026	1075090	1075644	1075775
1074905	1075028	1075091	1075645	1075776
1074907	1075030	1075092	1075646	
1074909	1075031	1075093	1075648	
1074910	1075033	1075094	1075649	
1074984	1075035	1075095	1075651	
1074985	1075036	1075096	1075653	
1074986	1075039	1075099	1075656	
1074989	1075040	1075583	1075665	
1074991	1075042	1075584	1075667	
1074992	1075044	1075585	1075670	

**D. Explanation for Request for Review**

On February 24, 2005, we received a decision letter from the Universal Service Administrative Company (USAC) regarding our Funding Year 2003-2004 appeal. The letter titled "Administrator's Decision on Appeal – Funding Year 2003-2004" denied our appeal to the

Schools and Libraries Division (SLD). We believe that our attempt to comply with both state and federal guidance may have not only caused confusion but resulted in the denial of our E-rate request.

Simply stated Wyoming's State Supreme Court directed the Governor and the Wyoming Department of Education (WDE) to establish a statewide network that would insure "equal opportunity for a proper education" for every student in Wyoming. This decision emphasized that compatibility with the existing systems and in turn functionality was the primary necessity. Ultimately this resulted in functionality "weighted" highest in our criteria calculation. When dealing with state education issues the US Constitution requires us to follow state directives first then comply with federal directives, this of course is the reason cost was "weighted" second in our criteria. By following these directives we believe we were able, to comply with both directives when choosing Qwest, formally known as US West. At this time we would like to ask the Federal Communications Commission (FCC) to review this decision based on the following information, supporting that Qwest was both the lowest cost option and the most compatible and capable choice for our state.

The State of Wyoming requests a FCC review of the SDL's denial of funding for the above referenced Funding Request Numbers based on the following language appearing in the Funding Commitment Report for each number:

Funding Commitment Decision: \$0.00 – Bidding Violation

Funding Commitment Decision Explanation: Documentation provided demonstrates that price was not the primary factor in selecting this service provider's proposal.

The request for funds intends to provide support for each school district's use of the Wyoming Equality Network (WEN). The WEN is a statewide, high-speed data and video network that connects all Wyoming public schools. Some background on the genesis of the WEN may be of assistance.

The development of the WEN arose as a result of the Wyoming Supreme Court's decision in *Campbell Co. School District v. Wyoming*, 907 P.2d 1238 (Wyo. 1995), which found that, *inter alia*, the Wyoming Constitution requires an "equal opportunity for a proper education" for the children of the state. 907 P.2d at 1278. To address this mandate, the Wyoming State Legislature in 1997 enacted legislation which requires the State Superintendent of Public Instruction to cooperate with interested parties to develop and implement a statewide education technology plan, (1997 Session Laws of Wyoming, Chapter 65, Section 1 W.S. § 21-2-202(a) (xx)). Furthermore the Legislature directed the Governor and State Superintendent to establish a committee to prepare a request for proposals for a statewide network allowing for data transmission in every school building and two-way video capability to the high schools (1997 Session Laws of Wyoming, Chapter 80, Section 1).

In compliance with the Legislative directives, on April 3, 1998, Wyoming Governor Jim Geringer and State Superintendent of Public Instruction Judy Catchpole signed the Master Agreement for Technology in Education with US West, now Qwest Communications. The Agreement provided for "services to be furnished by [US West] to provide telecommunications capabilities to schools and related entities for the creation of a telecommunications network within the state of Wyoming." The term of the contract ran from July 1, 1998, through June 20, 2003. A subsequent amendment to the contract allowed for the term to be extended for up to an additional 36 months provided that Qwest met certain milestones related to upgrading communication capabilities in designated parts of Wyoming. In 2001, the Qwest contract was extended until June 30, 2006.

The State of Wyoming looks to the FCC 99-216 decision as supporting documentation for this appeal. (FCC 99-216 document attached)

In the FCC 99-216, Integrated Systems & Internet Solutions Inc (ISIS 2000) claimed that the State of Tennessee did not comply with the Federal Communications Commission's (FCC) competitive bid requirements found in section 54.504 and 54.511 of the FCC rules. (47 C.F.R. § 54.504 (a) and 54.511) Section 54.511 states that "schools shall carefully consider all bids submitted and may consider relevant factors other than the pre-discounted prices submitted by providers."

ISIS 2000 claimed that the State of Tennessee awarded a contract to ENA in violation of the FCC rules stating that "pricing must be the 'primary factor' when awarding service contracts." ISIS 2000 continued its claim by showing that ENA was given more points than it was in the pricing section of the response evaluation, showing that ENA was not the lowest bid.

After careful review the FCC dismissed ISIS 2000's claim by stating that the State of Tennessee awarded ENA the contract by taking "service quality into account and choose the offering...that meets their needs 'most effectively and efficiently.'" In short the State of Tennessee chose the most cost effective bid.

#### *State of Wyoming's Documentation*

The Technology in Education Project Request for Proposal (RFP) was developed, distributed, and awarded according to State Statutory Regulations. (Please see attached State Regulations) The RFP established evaluation criteria based on the quality of services necessary to implement the state mandate. The RFP's evaluation criteria were weighted with a percentage: functionality 30%, pricing 20%, vendor support 20%, vendor qualifications 15%, and project plan 15%.

Functionality was given the highest percentage due to the strict mandate of the Wyoming Supreme Court and Wyoming Legislature. In order to meet this mandate, it was necessary to find a service provider with the capability of providing telecommunication services to all entities over a large and very diverse geographic area. The statewide data and two-way video conferencing connections also had to be compatible with the existing technologies and facilities so operation and maintenance on a state level were more cost effective.

Pricing, though not weighted as high as functionality, was still a primary factor in awarding the contract. Although the creation of the WEN was a state mandate, the awarding of a contract was dependent on legislative funding. The costing structure had to provide information regarding one-time cost, recurring costs, as well as a cost structure of a possible contract extension until 2006. Evaluators were asked to review the cost structure with the public's and state's best interest in mind.

Each respondent, (TCI, TAMSCO Research & Management Systems LLC, and US West), were evaluated using these criteria by a seven (7) member team. Each team member "scored" the responses on an individual and team level. The RFP review team presented the combined scores to the Wyoming Governor and the Superintendent of Public Instruction recommending that US West, now Qwest Communications, be awarded the contract.

The evaluation team's recommendation was based on Qwest's ability to provide services to all the entities in the state, as well as providing a cost structure, that was \$1.8 million less than the other responses. The evaluators found that Qwest Communications was able to provide these services by subcontracting with independent telecommunication service providers throughout the state, while still providing the state with the lowest bid.

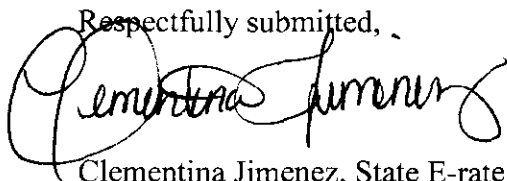
Furthermore, the contract under which Qwest provides services for the WEN has been properly executed in compliance with state law. The only proper avenue for terminating the WEN contract is through non-appropriation of funding by the state legislature. Preemption of state laws is expressly forbidden in the FCC rules. 47 CFR § 54.504(a). Furthermore, the FCC rules allow for long term contracts such as the WEN. 47 CFR § 507(e).

You will find supporting documentation attached to this letter of appeal. The documentation provided supports the decision of selecting Qwest, with strong evidence that Qwest was awarded the contract because of functionality and because they were the most cost-effective to the state. The documentation will also show the state's attempt to comply with the requirements established by the Schools and Libraries Division staff for acquiring E-Rate funding for WEN services.

The fact that the State of Wyoming accepted the lowest bid should render the basis for the funding denial irrelevant. The State's decision to consider other factors in awarding the bid is supported by the cited FCC decision and the FCC's rules.

Based on the foregoing, the State of Wyoming requests the Federal Communications Commission to reconsider the Schools and Libraries Division funding decision for the FRNs listed and award funding for those requests.

Respectfully submitted, .

A handwritten signature in black ink, appearing to read "Clementina Jimenez", written over the typed name.

Clementina Jimenez, State E-rate Coordinator  
Wyoming Department of Education

Attachments:

1. FCC 99-216 partial document
2. "A Vendor's guide: How to do Business with The State of Wyoming" partial document
3. Evaluation Criteria and Scoring RFP-0409D document
4. Response combined score sheet
5. Individual scoring sheets
6. Copy of costing structure for each respondent
7. Letter of recommendation to Governor Jim Geringer

100.00

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of  
Request for Review by  
the Department of Education of the  
State of Tennessee of the Decision of  
the Universal Service Administrator

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) Application No. 18132  
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)

Request for Review by  
Integrated Systems and Internet Solutions, Inc.  
of the Decision of  
the Universal Service Administrator

Request for Review by  
Education Networks of America  
of the Decision of  
the Universal Service Administrator

Federal-State Joint Board on Universal Service

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)  
) CC Docket No. 96-45  
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)

Changes to the Board of Directors  
of the National Exchange Carrier  
Association, Inc.

)  
)  
) CC Docket No. 97-21  
)  
)

ORDER

Adopted: August 11, 1999

Released: August 11, 1999

By the Commission: Commissioner Furchtgott-Roth approving in part, concurring in part, and dissenting in part, and issuing a statement at a later date.

I. INTRODUCTION

1. By this Order, we grant in part and deny in part the requests for review filed by the Department of Education of the State of Tennessee (Tennessee) and Education Networks of America (ENA). As explained more fully below, we find that Tennessee may receive discounts on Internet access service provided by ENA, but may not receive discounts on charges by ENA to Tennessee related to components of the ConnectTEN network it previously owned, but sold to ENA. We also deny the request for review filed by Integrated Systems and Internet Solutions, Inc. (ISIS 2000) and dismiss as moot its Objection to Application/Request for Expedited



Declaratory Ruling filed April 3, 1998.<sup>1</sup> As described below, we find that, contrary to ISIS 2000's claim, Tennessee complied with our competitive bidding requirements.

## II. BACKGROUND

2. Section 254(h)(1)(B) of the Communications Act of 1934, as amended, requires:

[a]ll telecommunications carriers . . . upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(2), [to] provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties.<sup>2</sup>

Section 254(c)(3) states that, in addition to services designated as eligible for universal service support generally, the Commission "may designate additional services for such support mechanisms for schools . . . for the purposes of subsection (h)."<sup>3</sup> In light of these provisions, the Commission concluded that the definition of universal service for schools and libraries includes telecommunications services, internet access and internal connections ("eligible services").<sup>4</sup>

3. Schools may receive discounted telecommunications services only from telecommunications carriers, but may receive discounted Internet access services and internal connections even from non-telecommunications providers.<sup>5</sup> In order to receive discounts on eligible services, schools must file certain information with the administrator of the universal service support mechanisms, the Universal Service Administrative Company (USAC or Administrator).<sup>6</sup> Specifically, the school must file an application with the Administrator that,

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<sup>1</sup> We note that, in submitting reply comments to ISIS 2000's request for review, ENA filed, in the alternative, a motion to accept late-filed pleadings. We see no need to grant the motion because ENA filed within the requisite time period.

<sup>2</sup> 47 U.S.C. § 254(h)(1)(B).

<sup>3</sup> 47 U.S.C. § 254(c)(3).

<sup>4</sup> *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Red 8776, 9002 at para. 425 (1997) (*Universal Service Order*), as corrected by *Errata*, CC Docket No. 96-45 (rel. June 4, 1997), *affirmed in pertinent part*, *Texas Office of Pub. Util. Counsel v. FCC*, 1999 WL 556461 (5th Cir. 1999).

<sup>5</sup> *Universal Service Order*, 12 FCC Red 8776, 9002 at para. 425 and 9084-9089 at paras. 589-600.

<sup>6</sup> Prior to January 1, 1999, the Schools and Libraries Corporation (SLC) was responsible for administering the schools and libraries universal service support mechanism. On January 1, 1999, the SLC merged into the USAC, and USAC became the Universal Service Administrator for the schools and libraries universal service support mechanism. See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.* (CC Docket

*inter alia*, sets forth the school's technological needs and the services for which discounts are sought (Form 470). The school must generally use the Form 470 application as the basis for seeking competitive bids on the services for which discounts are sought.<sup>7</sup> Once the school has signed a contract for the eligible services, it must notify the Administrator of the signed contract, as well as of the estimate of funds needed to cover the discounts to be given those services that qualify as eligible services. Notification is accomplished by filing the Form 471 application. The Administrator then determines the amount of discounts for which the school is eligible.

4. Consistent with these requirements, Tennessee submitted its Form 470 application to the Administrator for receipt of competitive bids, and announced its intent to award the contract for Internet access service to ENA on March 20, 1998. ISIS 2000 also bid on Tennessee's request for Internet access service without success. Subsequent to the contract award, but prior to the time Tennessee filed its Form 471 application with the Administrator, ISIS 2000 filed an objection with the Commission and the Administrator.<sup>8</sup> At the same time, ISIS 2000 also availed itself of Tennessee's comprehensive bid protest process.<sup>9</sup> After the administrative review part of the Tennessee bid protest process was completed, and ISIS 2000's bid protest was denied,<sup>10</sup> Tennessee filed its Form 471 application with the Administrator. On February 26, 1999, the Administrator notified Tennessee that it would not receive support it requested from the schools and libraries universal service support mechanism for discounts on Internet access service.<sup>11</sup> On March 29, 1999, Tennessee, ENA, and ISIS 2000 requested Commission review of the

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No. 97-21), *Federal-State Joint Board on Universal Service* (CC Docket 96-45), Third Report and Order and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998). Upon the merger of the SLC into USAC, SLC became the Schools and Libraries Division (SLD) of USAC.

<sup>7</sup> See 47 C.F.R. §§ 54.504 and 54.511. Pre-existing contracts, as defined by our rules, are exempt from the competitive bidding requirements. See 47 C.F.R. § 54.511(c).

<sup>8</sup> See Appendix A for a complete chronology of the numerous filings by the parties requesting review of the Administrator's decision. We will include those pleadings in this record. Appendix A also contains the short form names by which we will refer to the pleadings discussed herein.

<sup>9</sup> See ISIS 2000 1998 Reply to Consolidated Response at Attachment A. See also Letter from Kenneth J. Krisko, Wiley, Rein & Fielding, to Magalie Roman Salas, Secretary, Federal Communications Commission, dated June 25, 1999 (*June 25th Ex Parte Letter*).

<sup>10</sup> We note that ISIS 2000 had a right to pursue its complaint in state court, but we have no evidence that it did so. See Tennessee 1998 Opposition at 5 and Attachment I.

<sup>11</sup> See Letter from Debra M. Kriete, General Counsel, Schools and Libraries Division, Universal Service Administrative Company to William K. Coulter, Coudert Brothers, Jeffrey S. Linder, Wiley, Rein & Fielding, and Ramsey L. Woodworth, Wilkes, Artis, Hedrick & Lane, dated February 26, 1999 (Administrator's Decision Letter).

Administrator's decision.<sup>12</sup> These requests for review are the subject of this decision.

### III. DISCUSSION

#### A. Compliance with the Commission's Competitive Bid Requirements

##### 1. Administrator's Decision

5. ISIS 2000 generally complained before the Administrator that Tennessee failed to comply with the Commission's competitive bid requirements found in sections 54.504 and 54.511 of the Commission's rules.<sup>13</sup> With regard to this specific issue, ISIS 2000 essentially took issue with the fact that Tennessee, in its consideration of the cost factor, awarded more bid points to ENA's bid even though ENA's total, initial bid was greater than ISIS 2000's bid. The Administrator determined that it would "defer to the state and local competitive bid procurement review procedures and findings."<sup>14</sup> ISIS 2000 seeks review of this aspect of the Administrator's decision.

##### 2. Discussion

6. For the reasons discussed below, we conclude that, contrary to ISIS 2000's argument and consistent with the Administrator's finding, Tennessee did comply with the Commission's competitive bid requirements. In particular, we find that Tennessee adequately considered price, as well as other factors, in determining the most cost-effective bid. Therefore, we deny ISIS 2000's request for review with respect to the Administrator's determination on this issue.

7. As ISIS 2000 correctly notes, the Commission's rules generally require schools to seek competitive bids on the services for which they seek a discount.<sup>15</sup> In addition, section 54.511 states that schools shall "carefully consider all bids submitted and may consider relevant factors other than the pre-discount prices submitted by providers."<sup>16</sup> The Commission explained its competitive bid requirements by stating that it concurred with the Joint Board's recommendation that the Commission permit schools "maximum flexibility" to take service quality into account

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<sup>12</sup> Tennessee Request for Review, ENA Request for Review, and ISIS 2000 Request for Review (filed March 29, 1999).

<sup>13</sup> 47 C.F.R. §§ 54.504(a) and 54.511.

<sup>14</sup> Administrator's Decision Letter at 2.

<sup>15</sup> 47 C.F.R. § 54.504.

<sup>16</sup> 47 C.F.R. § 54.511.

and to choose the offering . . . that meets their needs 'most effectively and efficiently,'" but noted that price should be the "primary factor" in selecting a bid.<sup>17</sup> Indeed, in discussing the competitive bid requirements specifically with regard to Internet access, the Commission noted that the Joint Board recommended that "the Commission require schools and libraries [only] to select the most cost-effective supplier of access."<sup>18</sup> Moreover, the Commission specifically stated in this regard that other factors, such as "prior experience, personnel qualifications, including technical excellence, and management capability, including schedule compliance," form a "reasonable basis on which to evaluate whether an offering is cost-effective."<sup>19</sup> The Commission later reaffirmed its position that "schools . . . are not required to select the lowest bids offered, although the Commission stated that price should be the 'primary factor.'"<sup>20</sup>

8. In its request for review, ISIS 2000 argues that our rules require that "[b]efore non-cost factors may even be considered, section 54.504 requires the objective consideration of pre-discount price."<sup>21</sup> Although we are not certain that the order in which factors are considered is important, we disagree with ISIS 2000 to the extent that it is suggesting that the Commission intended its statement that "price should be the primary factor in selecting a bid" to mean that price should be the initial determining factor considered to the exclusion of other factors. Price cannot be properly evaluated without consideration of what is being offered. Interpreting the Commission's competitive bid rules as requiring schools to select the lowest bid with little regard for the quality of services necessary to achieve technology goals would obviate the "maximum flexibility" the Commission expressly afforded schools.<sup>22</sup> That was not the Commission's intention.

<sup>17</sup> *Universal Service Order*, 12 FCC Rcd at 9029, para. 481.

<sup>18</sup> *Universal Service Order*, 12 FCC Rcd at 9029, para. 481.

<sup>19</sup> *Universal Service Order*, 12 FCC Rcd at 9030, para. 481.

<sup>20</sup> *Federal State Joint Board on Universal Service* (CC Docket No. 96-45); *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charge* (CC Docket Nos. 96-262, 94-1, 91-213, 95-72), Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5429 at para. 192 (1997) (*Fourth Reconsideration Order*).

<sup>21</sup> ISIS 2000 Request for Review at 8.

<sup>22</sup> We note, moreover, that requiring schools to evaluate price first may lead to a conflict with state and/or local government procurement laws, rules, or practices. Indeed, Tennessee procurement laws and rules require cost proposals to be opened only after evaluation of the non-cost sections of the proposals have been completed. See Tenn. Code Ann. section 12-4-109(a)(1)(A)(iii); see also Tennessee Opposition at 8. As section 54.504 states, "[the Commission's] competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements." 47 C.F.R. § 54.504.

9. In light of ISIS 2000's complaint here, we take this opportunity to provide useful guidance with regard to our competitive bid requirements and factors that may be considered in evaluating competitive bids for purposes of our rules. As stated above, we concurred with the Joint Board's recommendation that schools involved in the competitive bid process be allowed to "take service quality into account and to choose the offering . . . that meets their needs 'most effectively and efficiently.'" Indeed, just after we stated that price should be the primary factor in selecting a bid, we continued the discussion by focusing on cost-effectiveness.<sup>23</sup> In addition, we specifically listed factors other than price, such as technical excellence, that could "form a basis on which to evaluate whether an offering is cost-effective." The paragraph on this issue in the *Universal Service Order* should be read as a whole to say that a school should have the flexibility to select different levels of service, to the extent such flexibility is consistent with that school's technology plan and ability to pay for such services, but, when selecting among comparable services, a school should be guided by price in its selection. Even among bids for comparable services, however, this does not mean that the lowest bid must be selected. Price, however, should be carefully considered at this point to ensure that any considerations between price and technical excellence (or other factors) are reasonable.

10. We expect that we can generally rely on local and/or state procurement processes that include a competitive bid requirement as a means to ensure compliance with our competitive bid requirements. That is, we believe it sensible, as the Administrator did, to rely on state and/or local procurement rules and practices for determining compliance with our competitive bid requirements because such rules and practices will generally consider price to be a "primary factor" (as explained *supra*), and select the most cost-effective bid. Thus, consistent with Tennessee's view,<sup>24</sup> and contrary to ISIS 2000's view,<sup>25</sup> we conclude that the Administrator need not make a separate finding of compliance with our competitive bid requirements in this instance. We note that, even in those instances when schools do not have established competitive bid procurement processes, the Administrator generally need not make a separate finding that a school has selected the most cost-effective bid. Such a finding is not generally necessary because a school has an incentive to select the most cost-effective bid, even apart from any procurement requirements, because it must pay its pro rata share of the cost of the services requested.<sup>26</sup> Absent evidence to the contrary in a particular case, we believe that this incentive is

<sup>23</sup> *Universal Service Order*, 12 FCC Rcd at 9029-9030, para. 481.

<sup>24</sup> Tennessee 1999 Opposition at 6.

<sup>25</sup> ISIS 2000 Request for Review at 9.

<sup>26</sup> We found this particularly compelling with regard to pre-existing contracts. See e.g., *Universal Service Order*, 12 FCC Rcd at 9064, para. 547; *Federal-State Joint Board on Universal Service, Order on Reconsideration*, 12 FCC Rcd 10095, 10097 at para. 7 (1997).

generally sufficient to support a conclusion that a school has selected the most cost-effective bid for requested services.

11. In that regard, we note that this record reflects that the procurement process at issue here did consider price as a "primary factor," and required selection of the most cost-effective bid. Specifically, Tennessee law states that procurement regulations "shall require: (1) [t]o the greatest practicable extent, evaluation and consideration of . . . cost in the awarding of the contracts."<sup>27</sup> In addition, Tennessee's request for bids indicated that the contract would be awarded to the most cost effective bidder.<sup>28</sup> We believe all of this supports the conclusion that the procurement process at issue here complies with our competitive bid requirements, and therefore, our competitive bid requirements were met.

12. As to ISIS 2000's narrower complaint that section 54.504 of our rules requires schools to consider only the prediscount price when evaluating the cost component of a bid (assuming a bidding process that evaluates cost in a separate category from other non-cost factors), we note at the outset that, regardless of whether we agree with this interpretation, the record evidence supports Tennessee's and ENA's argument that differences in the service offerings were such that Tennessee could reasonably prefer the ENA service offering over the ISIS 2000 service offering.<sup>29</sup> As such, a comparison of price is not determinative of a cost-effective bid in this case.

13. Moreover, to the extent that ISIS 2000 is suggesting that, when a school evaluates cost in a separate category from other non-cost categories, the school must always award the most points for the cost category to the lowest bidder in order to comply with section 54.504, we cannot agree. While we certainly expect that schools will evaluate the actual dollar amount proposed by a bidder, we do not intend to limit them to considering only the absolute dollar amount proposed such that they must always award the most points in the cost category to the lowest bid. Schools should be free to consider other issues relevant to cost, such as whether the price bid is realistic for the services proposed. While we appreciate ISIS 2000's concern for fiscal responsibility in the schools and libraries universal service program, we note that, as ISIS 2000 itself references,<sup>30</sup> requiring schools to pay their pro rata share of the overall prediscount

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<sup>27</sup> See Tenn Code Ann. § 12-4-109(a)(1)(A)(i).

<sup>28</sup> See generally ISIS 2000 1998 Objection at Attachment E (Portion of State of Tennessee Request for Proposal establishing criteria and weight to be given criteria in awarding contract).

<sup>29</sup> See ISIS 2000 1998 Reply to Consolidated Response at Attachment A, pp. 78-81. See also June 25th Ex Parte Letter.

<sup>30</sup> See e.g., ISIS 2000 Request for Review at 5-6 (noting that, in allowing exemptions from the competitive bid process for certain pre-existing contracts, the Commission found such entities would have "the necessary incentive to select fiscally reasonable arrangements . . . because they would be required to pay their pro-rata share of the overall

price provides some incentive for schools to show fiscal constraint.

14. It appears that ISIS 2000's ultimate complaint in this regard is that Tennessee's criteria for evaluating cost "incentivized bidders to offer the highest pre-discount price."<sup>31</sup> While we need not address this specific concern for the reasons discussed above, we note that ISIS 2000's argument does not work as an absolute.<sup>32</sup> That is, although the actual formula used to evaluate the prices of the bidders resulted in ENA receiving more points than ISIS 2000 in the cost category, even though ISIS 2000's bid was lower than ENA's bid at that point in time,<sup>33</sup> as Tennessee points out, under other circumstances, a lower bid would receive more points.<sup>34</sup> Although the formula used to evaluate cost may have awarded the highest points for cost to bids maximizing federal support, this is not prohibited by our rules.

#### B. Eligibility for Discounts on Services Related to Existing ConnectTEN Components

##### 1. Administrator's Decision

15. Before the Administrator, ISIS 2000 argued generally that a transaction underlying Tennessee's requests for discounts on its Form 471 application rendered some amount of the requests ineligible.<sup>35</sup> Specifically, in its bid to provide Internet access to Tennessee, ENA

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pre-discount contract price," citing to *Federal-State Joint Board on Universal Service*, Order on Reconsideration, 12 FCC Red 10095 (1997)).

<sup>31</sup> ISIS 2000 Request for Review at 8. The evaluation criteria of cost was expressed as a formula: Total State & Local, Other Funds, Savings, and FCC funds paid to proposer/Total State and Local Funds = cost factor of proposal being evaluated. The proposal with the highest cost factor was awarded the full points available for the cost proposal category. Other proposals were awarded points based on a comparison to the proposal with the highest cost factor. See ISIS 2000 1998 Objection at Attachment E.

<sup>32</sup> Although not dispositive of the issue before us, we note that ISIS 2000 had an opportunity to object to the cost formula used by Tennessee prior to the submission of bids, but did not do so. See ISIS 2000 Reply to Consolidated Response at Attachment A, p. 77. See also *June 25th Ex Parte Letter*.

<sup>33</sup> We note that, during the bid protest process, there was evidence to suggest that the ISIS 2000 bid was insufficient for the services proposed. See ISIS 2000 1998 Reply to Consolidated Response at Attachment A, p. 86; ENA 1999 Opposition at 7. But see ISIS 2000 1999 Reply at 2. We do not, however, make a finding with regard to this point because it is unnecessary to the disposition of the case.

<sup>34</sup> Tennessee 1999 Opposition at 12 (showing that a bid of \$75 could have a bid cost factor of 4.2, while a bid of \$65 could have a bid cost factor of 4.5. Thus, under the formula, the \$65 bid would receive the most points for the cost factor category.).

<sup>35</sup> Schools filing Form 471 applications were required to list each request for discounted services on a separate line on the application. The relevant portion of Tennessee's Form 471 divided its Internet access service into 10 different requests. The first few requests refer to "basic Internet access service," with the remaining referring to different

46. Although ISIS 2000's request for review states that it seeks "partial" review of the Administrator's decision as it relates to the competitive bid requirements, it also states in a footnote that:

[i]n addition, currently pending before the Commission is ISIS 2000's Request for Expedited Declaratory Ruling, filed April 3, 1998, and subsequent pleadings requesting a declaratory ruling from the Commission with respect to the issues raised by the Department's competitive bidding process and subsequent application for funding. ISIS 2000 requests that these issues be resolved in conjunction with this appeal.<sup>102</sup>

ISIS 2000's initial pleadings, to which this footnote makes reference, raises broader issues than those for which it ultimately seeks review here. As such, it is not entirely clear if this limited reference is intended as a request for broader review. Regardless of that answer, however, we believe that, through Tennessee's and ENA's requests for review, we have essentially addressed all issues raised by ISIS 2000's initial pleadings; namely, whether Tennessee should receive support for costs related to the ConnectTEN network and ENA's upgraded network. Therefore, we find that, because we have addressed these issues herein, ISIS 2000 1998 Objection, and subsequently-filed related pleadings, is rendered moot. We note that ISIS 2000 also originally objected to requests for discounts on technical support for the facilities at issue here. Although not specifically raised in its request for review, we note that the Administrator correctly explained that this technical support will be part of an eligible service to the extent the underlying service is eligible.

#### IV. Conclusion

47. We therefore deny ISIS 2000's request for review regarding Tennessee's compliance with our competitive bidding processes because we conclude that Tennessee indeed complied with those requirements. Moreover, we grant in part, and deny in part, ENA's and Tennessee's requests for review. Specifically, we find that, because Tennessee owned the ConnectTEN network, and subsequently sold it to ENA, who then used it to provide Internet access service to Tennessee, we will not allow discounts with regard to such transaction for the reasons discussed above. In addition, we find that, because ENA has shown that it is providing an end-to-end Internet access service, we will allow discounts on charges for the provision of its Internet access service, including the cost of facilities used to provide such service, except with regard to charges related to the ConnectTEN network.

48. We require the Bureau, through its oversight role, to work with the Administrator and Tennessee to implement this decision. We expect that Tennessee will provide, to the extent

<sup>102</sup> ISIS 2000 Request for Review at 2, n. 1.



necessary, any relevant information to the Administrator regarding charges related to the ConnectTEN network that will allow those charges to be removed from its discount requests. We expect the Bureau to actively monitor these activities to ensure that our decision is implemented expeditiously, and in no case should implementation, by way of an Administrator's Decision Letter, be delayed longer than 10 working days from receipt of the information necessary to be provided by Tennessee to implement our decision. In addition, we wish to make clear that the Bureau may waive any rules if, and, to the extent necessary, to effectuate our decision herein.

#### V. ORDERING CLAUSES

49. Accordingly, IT IS ORDERED that, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 1.3, 54.504, 54.507(f), 54.511, 54.518, and 54.719, 47 C.F.R. §§ 1.3, 54.504, 54.507(f), 54.511, 54.518, and 54.719, the requests for review filed by the Department of Education of the State of Tennessee and Education Networks of America ARE DENIED IN PART and GRANTED IN PART as described *supra*, and the request for review filed by Integrated Systems and Internet Solutions, Inc, IS DENIED as described *supra*.

50. IT IS FURTHER ORDERED that the Objection to Application/Request for Expedited Declaratory Ruling filed by Integrated Systems and Internet Solutions, Inc., IS DISMISSED as moot.

51. IT IS FURTHER ORDERED that the Bureau, through its oversight role, work with the Administrator and Tennessee to implement this decision.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

11/20/01  
11/20/01



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### A VENDOR'S GUIDE: HOW TO DO BUSINESS WITH THE STATE OF WYOMING

Document #508

Title: A VENDOR'S GUIDE: HOW TO DO BUSINESS WITH THE STATE OF  
WYOMING

Description: Information on doing business with the state of Wyoming

#### PREFACE

There are five specific purchasing authorities in the state of Wyoming: the Judicial Districts through the state, the Legislative Branch, and the Wyoming Department of Transportation, all located in Cheyenne; the University of Wyoming located in Laramie; and the Department of Administration and Information, Purchasing Section located in Room 323 E, Emerson Building, Cheyenne, WY 82002. Telephone (307) 777-7253.

The principal objective of the purchasing unit is the acquisition of quality goods and services for the many state agencies we represent and to maximize the purchasing value of public funds. This pamphlet contains the information you need in order to do business with the State of Wyoming through the Department of Administration and Information, Purchasing Section.

Purchases are made in accordance with Statutory Regulations through a comprehensive system of specifications, competitive sealed bids and competitive sealed proposals (RFP's). Awards are made to the lowest responsive and responsible bidder, unless criteria other than price are considerations of the award.

#### PURCHASING STAFF AND RESPONSIBILITIES

##### PROGRAM MANAGER:

Mac Landen  
(307) 777-6707

##### PURCHASING REPRESENTATIVES:

Angela Morson  
(307) 777-6705  
Office Supplies, Machines and Furniture, Medical Supplies and Equipment,  
Pharmaceuticals

Wyoming Statutes require formal sealed bidding above certain dollar amounts. In those cases, bid packages are prepared and mailed to prospective bidders on our current Bidders' List for the commodities or services required, or advertised when Bid List is not available.

Each bid package contains complete instructions for submission of the bid. These instructions are included in the Call for Bids section of long-form bids and are included as back printing on our short-form bids. Bidders are cautioned to complete all information requested on each proposal form. Bids received without an authorized signature will not be considered. Envelopes are provided for submission of bids. Bidders must insert certain identifying information on the face of each bid envelope as indicated.

In certain cases, Requests for Proposals (RFP's) are issued - usually in the area of contracted services or consulting services.

Bids or RFP's are publicly opened at the time and date specified. Openings are held in Room 323E, Emerson Building, Cheyenne, Wyoming. Bids must be RECEIVED BEFORE the scheduled opening time. No bids will be accepted after that time.

Bid information is publicly available at the time of the bid opening. RFP information is restricted and not publicly available until after the award is made.

After bids are opened, the tabulation and analysis is made by the Purchasing Representative. After consultation with and concurrence from the involved state agency, the award is made by issuance of a Purchase Order or a Service Contract.

In the case of construction awards, the successful bidder must furnish any required forms (insurance, workers' compensation, bonds) as specified in the Bid Conditions before issuance of a contract.

Pre-bid conferences are held in cases where vendor or manufacturer input is desired before the bid package is finalized. Invitations to attend such a conference are issued to prospective bidders.

All bid packages carry the name of the assigned buyer. Questions regarding a bid should be addressed to the attention of the buyer.

#### PAYMENT TO VENDOR

Initiation of pay documents through the State Auditor's office for vendor payment is the responsibility of the state agency shown as the payor on the Purchase Order.

Partial payments are not normally made. Full payment is initiated after receipt of all items listed on the Purchase Order in the correct quantity, size, grade, or other itemized specifications and also after receipt of a correct itemized invoice for the merchandise involved, in accordance with prices, terms, and conditions as shown on the Purchase Order.

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## 6. Evaluation Criteria

Based on the information presented by bidders, compliant with the required responses in section 5, the criteria listed below will be used to evaluate all proposals submitted in response to this RFP. If no single proposal clearly receives the highest ranking based on these criteria and the mandatory responses in section 5, the evaluation panel may, at its sole discretion, select one or more finalists and request further clarifying information. The five major headings, 6.1 through 6.5, are listed below from highest priority to lowest for purposes of evaluation. Sub-headings (e.g., 6.1.1, 6.1.2, 6.1.3, *et cetera*...) are not listed in any priority order. *Major headings will be weighted according to the percentages shown in parentheses. Each sub-heading will be given between zero and three points: 3 = clearly complies with requirements; 2 = substantially complies, or appears to comply with minimal restrictions; 1 = marginal compliance, or suspected not to be in compliance; 0 = incomplete response or clearly does not comply.*

## 6.1 Functionality (30%)

## 6.1.1 Deliverable technology

- Technology is available for deployment in Wyoming

## 6.1.2 Compatible with existing technologies and facilities

## 6.1.3 A totally integrated system for education and state government

- Turnkey total package
- Applicable to other existing or future telecommunications needs of the state

## 6.1.4 Non proprietary

- Adheres to industry telecommunications standards for voice, video and data

## 6.1.5 Technical Design

- Redundancy and backup
- Reliability data and redundancy support plan

## 6.1.6 Scaleable

- Capacity can be increased without major equipment/infrastructure replacement

## 6.1.7 Upgradeable to future technology

- Reasonable migration path to next generation technologies

## 6.1.8 Flexible service offerings with no penalty for changes

6.2 Pricing (20%)

- 6.2.1 Long-run total costs (one-time plus five year recurring) for proposed system
- 6.2.2 Renewal contract options
- 6.2.3 Long term price protection
- 6.2.4 Innovative price plans

6.3 Vendor Support (20%)

- 6.3.1 Clearly defined vendor and customer responsibilities
- 6.3.2 Clearly defined problem escalation procedures
- 6.3.3 Single vendor contact for service/support
- 6.3.4 Local support in remote locations
- 6.3.5 Vendor presence in Wyoming
- 6.3.6 Long term commitment to doing business in Wyoming
- 6.3.7 Warranty
- 6.3.8 Training provided by vendor

6.4 Vendor Qualifications (15%)

- 6.4.1 Financial resources demonstrating the ability to carry out the project during the contract period
- 6.4.2 Technical expertise demonstrating the ability to carry out the project during the contract period
- 6.4.3 Specific staff resources and their qualifications to carry out the project during the contract period
- 6.4.4 Experience designing, delivering and managing other projects similar in scope and magnitude to this project



*Evaluation Criteria and Scoring*  
*RFP - 0409D*  
*TO BE USED ONLY BY EVALUATION PANEL*

6.5 Project Plan (15%)

- 6.5.1 Responsiveness of the proposal in stating a clear understanding of the requirements
- 6.5.2 Completeness of a step-by-step implementation plan
- 6.5.3 Reasonable and achievable implementation timelines (Project schedule)
- 6.5.4 Project and operational management plan
- 6.5.5 Complete transition plan if existing facilities will be replaced or phased out during the initial contract period